

AUGUST 8th, 1766.

Unto the Right Honourable the Lords of Council and Session,

THE
P E T I T I O N
O F *Refuse*

ALEXANDER ORME, Writer to the Signet,
George Richardson, Writer in Edinburgh, and
Robert Gray, Writer there,

Humbly sheweth,

THAT in the Year 1735, a Contract was executed betwixt the deceased *David Carmichael* of *Balmady*, on the one Part, and on the other Part, the now also deceased *David Carmichael*, younger of *Balmady*, Merchant in *Edinburgh*; his eldest Son, *Thomas Grame* of *Balgowan*, lately deceased, and the deceased *Robert Grame* Brother german to *John Grame* of *Balgowan*; whereby, the three Persons last named became bound to pay to the said *David Carmichael*, elderly an Annuity of 1200 Merks yearly, during his Life.

The Reason of this Obligation was, that *Balmady* had deeded himself of his Estate in favours of his Son, who had at that Time married; and he reserved to himself, out of his Estate, no more than the Annuity above mentioned, for Payment of which, *Balgowan* and *Robert Grame* became bound, with *David Carmichael*, as Cautioners for him.

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In these Circumstances, it might have been expected, that this small Annuity, which the Father reserved for his own Subsistence, at giving up his Estate to his Son, would have been punctually paid him. But so far was this from being the Case, that the Payments made to him, were extremely irregular; in so much, that, many Years, he did not receive one Half of his Annuity, and some Years not a Shilling of it, which reduced the poor old Man to great Hardships, and often laid him under the Necessity of living on Credit.

In the Year 1757, the said *David Carmichael*, elder, executed a Settlement and Deed of Trust; whereby, for the Uses and Purposes therein mentioned, he assigned and disposed (amongst other Subjects) to the Petitioners, the bygone Annuities, which should be due to him at the Time of his Death, in virtue of the above mentioned Contract in 1735.

Balmedy lived down to the Year 1761, and, notwithstanding very frequent Demands made by him upon his Son, his Annuity continued to the last to be extremely ill paid; in so much, that, at the Time of his Death, a very considerable Sum of bygone Annuities was resting him.

For these bygone Annuities, and the Annualrents thereof, from the Terms of Payment, the Petitioners were obliged to bring an Action against *Mr. Grame* of *Balgowan*, and against *John Grame* and *David Carmichael*, the Sons and Representatives of the two other Obligants in the Deed 1735. This Cause having come before the Lord *Auchinleck*, his Lordship was pleased, upon the 16th of July last, to pronounce this Interlocutor: "Decerns against the Defenders, for Payment to the Pursuers of the bygone Annuities libelled; but finds the Defenders are not liable in Payment of any Interest on said Annuities." And his Lordship was pleased, on the 30th July last, to adhere to this Interlocutor, and refuse a Representation to the Pursuers.

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Of the last Part of the Lord Ordinary's Interlocutor, which
refuses to the Petitioners Annualrent upon the Annuities,
the Petitioners must humbly crave your Lordships Review.

What, in the Petitioners Apprehension, did chiefly weigh
with the Lord Ordinary, at pronouncing the said Interlocutors,
was, That, in the Obligation above mentioned, granted by
David Carmichael, and the other Obligants, to his Father,
Balmedy, there is no Provision made, that the Annuities shall
bear Annualrent from the Terms of Payment. The Reason
of this was, that *Balmedy*, at giving up his Estate to his Son,
had no Doubt of receiving punctual Payment of the small
Annuity reserved for his Subsistence, and therefore did not
think it necessary to stipulate for Annualrents, in case of its
not being duly paid. But it is humbly thought, that this
Piece of Delicacy in the Father, as it rendered the Son more
blameable, for falling short in that Punctuality, which was
expected and relied on; so it ought rather to afford an addi-
tional Reason for subjecting him to Annualrents, than be
made an Argument against his paying them.

Another Argument made use of by the Defenders, was,
That *Balmedy* had not demanded Payment of his Annuities,
else they would have been more punctually paid him, espe-
cially as *Balgowan*, one of the Persons bound, was always in
such Circumstances, that Payment could have been easily ob-
tained from him.

But the Assertion of the Defenders, that Payment had not
been demanded, was an absolute Mistake in Fact. The Pur-
suers offered to prove, and, if necessary, will still bring Proof,
that *Balmedy* made repeated and frequent Demands on his
Son for his Annuities, and that, by not receiving Payment of
them, he was reduced to great Straits and Difficulties, and
frequently obliged to live upon Credit: He might, perhaps,
have sometimes obtained his Payment more readily, by
using Diligence against *Balgowan*; but as *Balgowan* was on-
ly Cautioner for *David Carmichael*, *Balmedy* knew that using
Diligence

Diligence against *Balgowan*, would have been the Occasion of immediate Distress to his Son, who was truly the Debitor. And, surely, no Argument can be justly drawn against him, from this Unwillingness to distress his Son.

As the Petitioner's Claim for Annualrent is so clearly founded in Equity, so they apprehend that it is supported by the Law and Practice. Numberless Instances occur every Day, where the Court allows Annualrents *nomine damni*; Annualrent is likewise, in many Cases, found to be due *ex mora*; and Annualrent, is constantly allowed where the Debitor is *lucratus*, by keeping in his Hand the Money which belongs to another.

The Petitioners apprehend, that all these Reasons concur to intitle them to Annualrent in the present Case: For, in the *first place*, it is clear that a *damnum* was sustained by the Annuities not being paid when they became due, as *Balmedy* was, by that Means, forced to borrow Money for his Subsistence, for which he was, no doubt, obliged to pay Annualrent; so that Annualrent is here justly due *nomine damni*.

And it is evident, that the *mora* has, in this Case, been very great; for *Balmedy* got no Clearance with respect to the Annuities, for no less than twenty-four Years before his Death, *viz.* from 1737 to 1761; and though it is true that, during that Space, intermediate Payments were made, yet, as was already observed, not one Half was paid for many Years, and some Years not a Penny, in so much, that, at the Time of his Death, there was no less than the Sum of 473 *l.* 19 *s.* 11 *d.* Sterling resting of bygone Annuities. In this Case, therefore, the *mora* is very great.

And, with respect to the third Ground, *viz.* that Annualrent is due where one reaps Advantage by keeping the Money of another, that does likewise take place in this Case; for the above Sum of 473 *l.* 19 *s.* 11 *d.* Sterling, in place of being paid to *Balmedie*, remained with the Debitor, who, as he had the Benefit thereof, ought to be liable for the Annualrents of it. And this Reason does the more strongly take place

to no place here, as your Lordships will be informed, that, in the
 said Contract of 1737, there is a Clause, whereby it is put in the
 said Option of the Obligants, in case of the Sale of the Lands of
 of Eccleshamagirdle, in place of continuing to pay the Annu-
 ities to Balmedy, to pay him at once the Sum of 12,000 Merks,
 bearing due thereof, with Annualrent of the said Sum of 12,000
 Merks from the Time of the Sale of these Lands. These
 Lands were not sold during Balmedy's Lifetime, so that the
 Annuities continued payable to him to the Time of his Death,
 but since then the Lands of Eccleshamagirdle have been sold,
 and the Price, out of which the said bygone Annuities ought
 to have been paid, has remained in the Hands of the De-
 fender, David Carmichael, who therefore ought to account to
 the Pursuers for the Annualrents of so much of that Price as
 is equivalent to the foresaid Sum of 473 l. 19 s. 11 d. of by-
 gone Annuities.

The Petitioners are hopeful that, for all these Reasons,
 your Lordships will see Cause to alter the Interlocutors of the
 Lord Ordinary, and to find them intitled to Annualrents of
 the bygone Annuities.

MAY it therefore please your Lordships to alter
 the Interlocutors of the Lord Ordinary, and to
 find the Petitioners intitled to Annualrents
 of the bygone Annuities from the Time the
 same became due; and, at any rate, to find
 them intitled thereto from the Time of the
 Sale of the Lands of Eccleshamagirdle.

According to Justice, &c.

WM. NAIRNE.

The Printers were so throng, being the End of the Session,
 that this Petition could not be printed in Time for the Boxes,
 by Twelve this Day.

[illegible]

the bygone Annals.

W. N. H. 112

that this Policy could not be carried in force for the reason
I have this day stated.

A close-up photograph of a textured surface, possibly a book cover or endpaper. The material has a mottled, aged appearance with various shades of grey and brown. A prominent vertical crease or fold runs down the center of the image. There are numerous small, dark spots and stains scattered across the surface, particularly concentrated along the crease and in the lower half. The lighting is somewhat uneven, with brighter areas towards the top and darker, more shadowed areas towards the bottom and along the crease.

Director of the Oklahoma State Department of Health, Oklahoma City, Oklahoma.

Mark's from the town of ...

but since then the labor of the country has been

and the fact that we have been told by David Cushman, who was one of the first to see the bones, that they were found in a place where there had been a battle.

The Petitioners are bound by the same obligations as the Government, and are equally responsible to the public.

the pygmy animals.

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INDIAN

that this Position could not be maintained in view of the fact that the British were in control of the Gulf.

A close-up, black and white photograph of a textured surface, possibly a book cover or endpaper. The image shows a vertical crease or fold running down the center. The surface is covered in numerous small, dark, irregular spots and fibers, giving it a mottled and aged appearance. The lighting is somewhat uneven, with the left side appearing slightly darker than the right.

